

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES E. AND SUSAN LOCKE)

For Appellants: James E. and Susan Locke,
in pro. per.

For Respondent: Lazaro L. Bobiles
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James E. and Susan Locke against a proposed assessment of additional personal income tax in the amount of \$164.53 for the year 1975.

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The question in this appeal is whether appellants have shown that respondent's determination, based on a federal audit report, was erroneous.

Respondent received a copy of a federal audit report which made a number of adjustments to appellants' 1975 federal tax return. The adjustments were made pursuant to federal statutes which were similar to California tax statutes; Therefore, respondent adopted the federal adjustments for state purposes and issued a notice of proposed assessment (NPA) to appellants reflecting those adjustments.

Appellants protested and indicated that the federal matter had been appealed to the United States Tax Court. At appellants' request, further action on the NPA was deferred pending the outcome of the federal appeal. A later request by respondent to provide information on the status of the federal appeal went unanswered, and respondent then affirmed the NPA.

Subsequent to the filing of this appeal, respondent offered to review either a copy of the United States Tax Court decision entered in appellants' case or substantiation for the deductions disallowed in the federal audit report. Again, appellants did not reply. Respondent then learned that the federal matter had been closed by stipulation of the parties, but the terms of the stipulation have not been disclosed by appellants.

Revenue and Taxation Code section 18451 provides that when adjustments are made on a taxpayer's federal return, the taxpayer "shall concede the accuracy of such determination or state wherein it is erroneous." When respondent issues a deficiency assessment based on federal adjustments, its action is presumed correct, and the taxpayer bears the burden of proving that the adjustments are wrong. (Appeal of Barbara P. Hutchinson, Cal. St. Bd. of Equal., June 29, 1982.)

In this appeal, appellants state that the Franchise Tax Board has not asked for proof of their tax deductions and asserted that it cannot fairly determine their tax liability if it has not reviewed their deductions. Appellants' first statement is clearly erroneous, as shown by respondent's Exhibit D, which is a copy of a letter sent to appellants requesting the submission of substantiation of their disallowed deductions. Regarding appellants' second statement, we reiterate that respondent's action is presumed correct unless shown by the

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taxpayer to be wrong. In any case, appellants can hardly complain of a lack of review where they have failed to provide any information to be reviewed.

For the reasons stated above, respondent's action must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of James E. and Susan Locke against a proposed assessment of additional personal income tax in the amount of \$164.59 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of January, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9